

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ERIC GUTIERREZ,

Petitioner,

vs.

CV 19-00436 RB/JHR

DAVID FAJARDO, Warden, and
HECTOR BALDERAS, Attorney
General for the State of New Mexico,

Respondents.

**ORDER ADOPTING PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

THIS MATTER comes before the Court on the Proposed Findings and Recommended Disposition (“PFRD”) of Magistrate Judge Jerry H. Ritter (Doc. 14), entered at the undersigned’s request pursuant to 28 U.S.C. § 636(b). (*See* Doc. 9.) In the PFRD, Magistrate Judge Ritter recommends the Court allow Petitioner Eric Gutierrez to file an amended § 2254 petition free of unexhausted claims because Gutierrez has not shown that his claim in Ground 3 is exhausted. (Doc. 14 at 8.) The PFRD notified the parties of their ability to file objections and that failure to do so waives appellate review. *Id.* at 9.) To date, no objections have been filed and the time to do so has passed. 28 U.S.C. § 636(b)(1)(C).

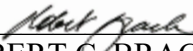
The failure to make timely objections to the Magistrate Judge’s PFRD waives appellate review of both factual and legal questions. *United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1059 (10th Cir. 1996).

Wherefore, the Court hereby:

- 1) **ADOPTS** Magistrate Judge Ritter’s PFRD (Doc. 14);
- 2) **ALLOWS** Gutierrez to file an amended § 2254 petition that contains only exhausted

- claims within 14 days of the entry of this order; and
- 3) if Gutierrez files an amended petition, **ORDERS** Respondents to file an answer within 30 days after receipt of Gutierrez' amended petition; or
 - 4) if Gutierrez does not file an amended petition free of unexhausted claims by the Court's deadline, the Court will dismiss Gutierrez' underlying petition (Doc. 1) in its entirety without prejudice.

IT IS SO ORDERED.



ROBERT C. BRACK
SENIOR U.S. DISTRICT JUDGE